



City of Portland, Oregon
Bureau of Development Services
Land Use Services
FROM CONCEPT TO CONSTRUCTION

Ted Wheeler, Mayor
Rebecca Esau, Director
Phone: (503) 823-7300
Fax: (503) 823-5630
TTY: (503) 823-6868
www.portlandoregon.gov/bds

Date: July 17, 2019
To: Interested Person
From: Timothy Novak, Land Use Services
503-823-5395 / Timothy.Novak@portlandoregon.gov

NOTICE OF A TYPE II_x DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The mailed copy of this document is only a summary of the decision. The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 18-235195 LDP AD

GENERAL INFORMATION

Applicant/Owner: Rebekah Anderson, dba Close-In Properties, LLC
Po Box 13434, Portland OR. 97213
(503) 715-1331; rentalhouse@gmail.com

Owner: Rebekah Anderson
2932 NE 34th Ave, Portland OR, 97212

Site Address: 4139 NE Ainsworth St & 6015 NE 42nd Ave

Legal Description: BLOCK 1 LOT 4, AINSWORTH PK ADD
Tax Account No.: R006100070
State ID No.: 1N1E13DA 03200
Quarter Section: 2434

Neighborhood: Concordia, contact Garlynn Woodsong at 503-936-9873.
Business District: Forty-Second Avenue, contact Clarence Larkins at 503-736-8111.
District Coalition: Northeast Coalition of Neighborhoods, contact Laura Becker at 503-388-6088.

Plan District: None
Zoning: Single Dwelling Residential, 5,000 square feet, 'R5'
Alternative Design Density Overlay, 'a'
Aircraft Landing Zone Overlay, 'h'

Case Type: Land Division 'LDP' *with concurrent* Adjustment Review 'AD'
Procedure: Type II_x, an administrative decision with appeal to the Hearings Officer.

Proposal:

The applicant is proposing to divide the site into two parcels under a provision in the Zoning Code that allows for attached houses on corners in the R5 zone (33.110.240.E). The applicant is proposing to attach the two existing houses via a shed addition between the two. Parcel 1 is

proposed to be 3,830 square feet in size and will retain the existing house and attached garage on the south portion of the site. Parcel 2 is proposed to be 3,047 square feet in size and will retain the existing house on the north portion of the site and the new shed addition. The proposed lot layout will result in each parcel having its front lot line on NE 42nd Avenue. The existing houses are closer to the lot line at 42nd Avenue than the minimum required 10-foot front building setback. Therefore, as part of this land division application, the applicant is requesting to adjust the front setback standard from 10 feet to 7.5 feet for 4139 NE Ainsworth Street (Parcel 1) and from 10 feet to 6.4 feet for 6015 NE 42nd Avenue (Parcel 2).

This partition proposal is reviewed through a Type IIx procedure because: (1) the site is in a residential zone; (2) 10 or fewer lots are proposed; and (3) a concurrent Adjustment Review is required (see 33.660.110).

For purposes of State Law, this land division is considered a partition. To partition land is to divide an area or tract of land into two or three parcels within a calendar year (See ORS 92.010). ORS 92.010 defines “parcel” as a single unit of land created by a partition of land. The applicant’s proposal is to create 2 units of land (2 parcels). Therefore, this land division is considered a partition.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The approval relevant criteria are:

Section 33.660.120, Approval Criteria for Land Divisions in Open Space and Residential Zones

Section 33.805.040, Approval Criteria for Adjustments

ANALYSIS

Site and Vicinity: The subject site is a flat lot at the corner of NE Ainsworth Street and NE 42nd Avenue. It is across NE Ainsworth Street from the site is Fernhill Park, a 26+acre city park with extensive amenities. TriMet Bus line #75 runs on NE 42nd Avenue and provides frequent transit service to the site and exempts development from minimum on-site parking requirements; parcel 1 will retain its existing on-site parking and parcel 2 will remain without any on-site parking. The lots across NE 42nd Avenue from the subject site are zoned R2, a multi-dwelling zone.

Infrastructure:

- **Streets** – NE 42nd Ave is classified in the City Transportation System Plan (TSP) as a Neighborhood Collector (Street Design & Traffic modes), Major Transit Priority street, City Bikeway, City Walkway, Truck Access street and a Major Emergency Response street. NE Ainsworth is classified as a Local Service street for all modes, except that it is also classified as a City Bikeway. Both streets are paved with curb, furnishing zone, and sidewalks. There is one street tree in the frontage along NE 42nd Avenue. The existing garage on parcel 1 is accessed via an existing curb cut on NE Ainsworth St.
- **Water Service** – Each lot has an existing service in the appropriate location. Additional water is available from the 6” main in NE Ainsworth Street and 12” main in NE 42nd Avenue
- **Sanitary Service** - There is a public 8-inch sanitary-only sewer in NE 42nd Ave that serves the existing dwelling on Parcel 2 and will remain connected to via lateral within its frontage.

There is a public 8-inch sanitary-only sewer in NE Ainsworth Street that the existing dwelling at 4139 NE Ainsworth on Parcel 1 is currently connected to with a lateral connection to the sanitary manhole located within the frontage of Parcel 1.

- **Stormwater Disposal** – There is no public storm-only sewer currently available to this property.

Zoning: R5a,h

(R5) Residential 5,000 – The R5 zone is intended to foster the development of single-dwelling residences on lots having a minimum area of 3,000 square feet, with minimum width and depth dimensions of 36 and 50 feet, respectively.

- Aircraft Landing Zone (33.400) – The “h” overlay limits the height of structures and vegetation in the vicinity of the Portland International Airport.
- Alternative Design Density Overlay Zone (33.405) – The “a” overlay is intended to allow increased density that meets design compatibility requirements. It focuses development on vacant sites, preserves existing housing stock, and encourages new development that is compatible with the surrounding residential neighborhood. *This proposal is not utilizing the provisions of the ‘a’ overlay.*

Land Use History: City records indicate there are no prior land use reviews for this site.

Agency Review: Several Bureaus have responded to this proposal and relevant comments are addressed under the applicable approval criteria. Exhibits “E” contain the complete responses.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on May 28, 2019. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

APPROVAL CRITERIA FOR LAND DIVISIONS IN OPEN SPACE AND RESIDENTIAL ZONES

33.660.120 *The Preliminary Plan for a land division will be approved if the review body finds that the applicant has shown that all of the following approval criteria have been met.*

Due to the specific location of this site, and the nature of the proposal, some of the criteria are not applicable. The following table summarizes the criteria that are not applicable. Applicable criteria are addressed below the table.

Criterion	Code Chapter/Section and Topic	Findings: Not applicable because:
C	33.631 - Flood Hazard Area	The site is not within the flood hazard area.
D	33.632 - Potential Landslide Hazard Area	The site is not within the potential landslide hazard area.
E	33.633 - Phased Land Division or Staged Final Plat	A phased land division or staged final plat has not been proposed.
F	33.634 - Recreation Area	The proposed density is less than 40 units.
H	33.636 - Tracts and Easements	No tracts or easements have been proposed or will be required.
I	33.639 - Solar Access	The proposed development is for something other than single-dwelling detached homes.
J	33.640 - Streams, Springs, Seeps and Wetlands	No streams, springs, seeps or wetlands are evident on the site.
L	33.654.110.B.2 - Dead end streets	No dead end streets are proposed.
	33.654.110.B.3 - Pedestrian connections in the I zones	The site is not located within an I zone.
	33.654.110.B.4 - Alleys in all zones	No alleys are proposed or required.
	33.654.120.C.3.c -	No turnarounds are proposed or required.

	Turnarounds	
	33.654.120.D - Common Greens	No common greens are proposed or required.
	33.654.120.E - Pedestrian Connections	There are no pedestrian connections proposed or required.
	33.654.120.F - Alleys	No alleys are proposed or required.
	33.654.120.G - Shared Courts	No shared courts are proposed or required.
	33.654.130.B - Existing public dead-end streets and pedestrian connections	No public dead-end streets or pedestrian connections exist that must be extended onto the site.
	33.654.130.C - Future extension of dead-end streets and pedestrian connections	No dead-end street or pedestrian connections are proposed or required.
	33.654.130.D - Partial rights-of-way	No partial public streets are proposed or required.
	33.655 - School District Enrollment Capacity	The proposal is for less than 11 lots or is not in the David Douglas School District.

Applicable Approval Criteria are:

A. Lots. The standards and approval criteria of Chapters 33.605 through 33.612 must be met.

Findings: Chapter 33.610 contains the density and lot dimension requirements applicable in the RF through R5 zones. Based on the applicant's survey, the site area is 6,877 square feet. The maximum density in the R5 zone is one unit per 5,000 square feet. Minimum density is one unit per 5,000 square feet based on 80 percent of the site area.

The applicant is proposing 2 parcels, which exceeds the maximum density normally allowed for the site. However, Parcels 1 and 2 are proposed for attached houses under the provision in 33.110.240.E, which allows one extra unit in conjunction with attached houses on corner lots. Therefore, an additional lot is allowed provided Parcels 1 and 2 are developed with attached houses. The applicant intends to convert the existing structures on the site to attached housing prior to final plat approval. The additional lot is allowed provided that the existing structures are attached and converted to attached houses.

With a condition of approval requiring that the existing houses be attached and limiting future development on Parcels 1 and 2 to attached houses, the density standards are met.

The lot dimensions required and proposed are shown in the following table:

	Min. Lot Area (square feet)	Max. Lot Area (square feet)	Min. Lot Width* (feet)	Min. Depth (feet)	Min. Front Lot Line (feet)
Original lot before division in R5 zone	4,500	NA	NA	NA	NA
Original lot before division	6,877				
New attached housing lots meet R2.5 Zone dimensions	1,600	NA	36	40	30
Parcel 1	3,830		56.77	67.41	56.77
Parcel 2	3,047		45.26	67.41	45.26

* Width is measured by placing a rectangle along the minimum front building setback line specified for the zone. The rectangle must have a minimum depth of 40 feet, or extend to the rear of the property line, whichever is less.

Attached Houses on Corner Lots

Parcels 1 and 2 are smaller than would normally be allowed in the R5 zone. As described above, these lots are being created through a provision that allows attached houses on corner lots. To use this code provision the original lot before the division must be at least 4,500 square feet.

As shown in the table above, taken together (before the division), the required lot dimension requirements are met. Proposed Parcels 1 and 2 each exceed the minimum lot dimension standards. Therefore, the corner lot may be divided to create Parcels 1 and 2 as proposed.

The findings above show that the applicable density and lot dimension standards are met. Therefore, this criterion is met.

B. Trees. The standards and approval criteria of Chapter 33.630, Tree Preservation, must be met.

Findings: The regulations of Chapter 33.630 require that trees be considered early in the design process with the goal of preserving high value trees and, when necessary, mitigating for the loss of trees.

To satisfy these requirements, the applicant must provide a tree plan that demonstrates, to the greatest extent practicable, the trees to be preserved provide the greatest environmental and aesthetic benefits for the site and the surrounding area. The tree plan must also show that trees are suitable for preservation, considering the health and condition of the tree and development impacts anticipated. Tree preservation must be maximized, to the extent practicable, while allowing for reasonable development considering the intensity of development allowed in the zone and site constraints, including existing utility easements and requirements for services and streets.

Trees that are healthy, native and non-nuisance species, 20 or more inches in diameter and in tree groves are the highest priority for preservation. Additional considerations include trees that are slower growing native species, buffering natural resources, preventing erosion and slope destabilization and limiting impacts on adjacent sites.

Some trees are exempt from the requirements of this chapter, if they are unhealthy, a nuisance species, within 10 feet of a building to remain on the site, within an existing right-of-way, or within an environmental zone.

In order to identify which trees are subject to these requirements, the applicant provided a tree survey (Exhibit C.2) that shows the location and size of trees on and adjacent to the site. The applicant also provided an arborist report (Exhibit A.3) that identifies each tree, its condition and suitability for preservation or its exempt status, its distance to a structure, and specifies a root protection zone and tree protection measures for each tree to be preserved.

Because the tree plan doesn't include the house on proposed parcel two and the arborist report doesn't include its own tree plan, staff visited the site to verify that the accuracy of the documents remained up-to-date. Staff verified that there is only one non-exempt tree on the site, a flowering dogwood, that provides a total of 13 inches of tree diameter subject to the preservation requirements of this chapter.

The one non-exempt tree is in good condition. It is a non-native/non-nuisance species. It is less than 20 inches in diameter.

Option 4 for tree preservation may be met when all trees on the site are less than 20 inches in diameter and the applicant proposes to retain at least 35 percent of the total non-exempt tree diameter at the site. Since there is only one non-exempt tree on-site, which is less than 20 inches in diameter, and because the applicant proposes to retain it, the proposal complies with Option 4.

The minimal development of the shed addition to connect the two existing structures will occur well outside the root protection zone of the one non-exempt tree. Since no other development is proposed at the site in association with the new parcels, no specific tree preservation is proposed. A condition of approval will be that future development on parcel 1 will have to protect the flowering dogwood in compliance with 11.60.030 Tree Protection Specifications. To ensure that future owners of parcel 1 are aware of the tree preservation requirements, the applicant must record an Acknowledgement of Tree Preservation Land Use Conditions, at the time of final plat. The acknowledgement must identify that development on Parcel 1 must be carried out in conformance with 11.60.030 Tree Protection in order to preserve and protect the flowering dogwood. With the above conditions, this approval criterion is met.

G. Clearing, Grading and Land Suitability. The approval criteria of Chapter 33.635, Clearing, Grading and Land Suitability must be met.

Findings: The regulations of Chapter 33.635 ensure that the proposed clearing and grading is reasonable given the infrastructure needs, site conditions, tree preservation requirements, and limit the impacts of erosion and sedimentation to help protect water quality and aquatic habitat.

Additionally, where geologic conditions or historic uses of the site indicate that a hazard may exist, the applicant must show that the proposed land division will result in lots that are suitable for development. The applicant may be required to make specific improvements to make the lots suitable for their intended uses and the provision of services and utilities.

Clearing and Grading: In this case, the site is primarily flat and is not located within the Potential Landslide Hazard Area. Therefore, no significant clearing or grading will be required on the site to make the new lots developable. In addition, there are no trees required to be preserved in the areas where new development on the site is anticipated. This criterion is met.

Land Suitability: The site is currently in residential use, and there is no record of any other use in the past. The site is currently connected to the public sanitary sewer. City records do not show that the septic system on the site was decommissioned at the time the house was connected to the public sewer system. Prior to final plat, the applicant must meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning of this facility. With a condition requiring final inspection for a decommissioning permit, the new lots can be considered suitable for new development, and this criterion is met.

K. Transportation impacts. The approval criteria of Chapter 33.641, Transportation Impacts, must be met; and,

Findings: The transportation system must be capable of supporting the proposed development in addition to the existing uses in the area.

Evaluation factors include: safety, street capacity, level of service, connectivity, transit availability, availability of pedestrian and bicycle networks, on-street parking impacts, access restrictions, neighborhood impacts, impacts on pedestrian, bicycle, and transit circulation. Evaluation factors may be balanced and measures to mitigate impacts may be necessary.

The Development Review Section of the Portland Bureau of Transportation (PBOT) has reviewed the application against the evaluation factors and has provided the following findings (see Exhibit E.2):

There are two homes currently on the subject property. The purpose of this land use request is to partition the site into two lots, with no further development proposed. PBOT contends that since no new development is proposed in relation to the proposed land division partition, there are no impacts related to this project. With no new vehicle trips expected to be generated from the subject site, none of the above referenced evaluation

factors are relevant. With no new expected impacts, there is no need for any mitigation measures. The above referenced approval criteria are satisfied.

PBOT has reviewed and concurs with the information supplied and available evidence. No mitigation is necessary for the transportation system to be capable of supporting the proposed development in addition to the existing uses in the area. These criteria are met.

L. Services and utilities. The regulations and criteria of Chapters 33.651 through 33.654, which address services and utilities, must be met.

Findings: Chapters 33.651 through 33.654 address water service standards, sanitary sewer disposal standards, stormwater management, utilities and rights of way. The criteria and standards are met as shown in the following table:

<p>33.651 Water Service standard – See Exhibit E.3 for detailed bureau comments.</p>
<p>The Water Bureau has indicated that service is available to the site, as noted on page 2 of this report. The water service standards of 33.651 have been verified.</p>
<p>33.652 Sanitary Sewer Disposal Service standards – See Exhibit E.1 for detailed comments.</p>
<p>The Bureau of Environmental Services has indicated that service is available to the site, as noted on page 2 of this report. The sanitary sewer service standards of 33.652 have been verified.</p>
<p>33.653.020 & .030 Stormwater Management criteria and standards – See Exhibit E.1</p>
<p>No stormwater tract is proposed or required. Therefore, criterion A is not applicable.</p> <ul style="list-style-type: none"> • BES noted that from the submitted site plans, it appears that the proposed addition/shed on Parcel 2 will add or redevelop less than 500 square feet of impervious area. Therefore, pollution reduction and flow control requirements of the SWMM do not apply. However, BES recommends that the applicant identify a disposal location that will not impact adjacent properties and/or structures. BES understands stormwater from the existing dwelling on Parcel 2 discharges to an on-site drywell. Because the proposed redevelopment is less than 500 square feet, stormwater from the addition can be directed into the existing storm system if it has available capacity. • BES also noted that there are no City records indicating where the stormwater pipes of the existing house on parcel 1 are directed. Prior to final plat approval, the applicant must document the location of the stormwater disposal for the existing house on parcel 1, to the satisfaction of BES. The applicant must modify the stormwater system for the existing house on parcel 1 as necessary to comply with Stormwater Management Manual prior to final plat approval. Any required plumbing permits must have final inspection approval.
<p>33.654.110 Connectivity and Locations of Rights-of-Way - See Exhibit E.2 for bureau comment</p>
<p>This section requires street and pedestrian connections where appropriate and practical, taking a number of factors into consideration. The following discussion is based on PBOT's assessment of the connectivity potential in the area. The City's spacing requirements for public through streets and public pedestrian connections is a maximum of 530-ft and 330-ft, respectively.</p> <p><i>No street connections have been identified in the vicinity of this property in the Portland Master Street Plan document. The location of the subject site within its block (corner site) is not a desirable location to provide a new public street or pedestrian connection through the block. PBOT has no concerns relative to providing additional connectivity through the subject site.</i></p> <p>Based on the foregoing no additional right-of-way connections are appropriate or suitable at this site to meet the standards of this section. Therefore, this criterion is met.</p>

33.654.120.B & C Width & elements of the right-of-way – See Exhibit E.2 for bureau comment

In reviewing this land division, PBOT relies on accepted civil and traffic engineering standards and specifications to determine if existing street improvements for motor vehicles, pedestrians and bicyclists can safely and efficiently serve the proposed new development. PBOT has stated,

In that there will be no increase in occupancy (increase in vehicle trips) resulting from the proposed partition nor will the project be considered a “significant alteration” pursuant City Code 17.88.010.C, there will be no required frontage improvements or property dedication associated with this proposal.

Based on the foregoing, the width of the right-of-way will be sufficient to accommodate the expected users and PBOT. This criterion is met.

33.654.130.A - Utilities (defined as telephone, cable, natural gas, electric, etc.)

Any easements that may be needed for private utilities that cannot be accommodated within the adjacent right-of-ways can be provided on the final plat. At this time no specific utility easements adjacent to the right-of-way have been identified as being necessary. Therefore, this criterion is met.

ADJUSTMENT**33.805.040 Approval Criteria**

The applicant is requesting to adjust the front building setback standard in the R5 zone from 10 feet to 7.5 feet for 4139 NE Ainsworth Street (Parcel 1) and from 10 feet to 6.4 feet for 6015 NE 42nd Avenue (Parcel 2). Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. below, have been met.

A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

Finding: The applicant is requesting a reduction to the minimum required front building setback of each existing building to allow for the relocation of the front lot line from NE Ainsworth Street to NE 42nd Avenue through the land division process. The purpose of setbacks in the single-dwelling zone are found in 33.110.220:

Purpose. *The setback regulations for buildings and garage entrances serve several purposes:*

- ***They maintain light, air, separation for fire protection, and access for fire fighting;***
- ***They reflect the general building scale and placement of houses in the city's neighborhoods;***
- *They promote a reasonable physical relationship between residences;*
- *They promote options for privacy for neighboring properties;*
- ***They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;***
- ***They provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity; and***
- *They provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street.*

(Emphasis added)

Staff has identified above in bold the relevant purpose statements to evaluate the proposed reduced required front building setbacks against.

They maintain light, air, separation for fire protection, and access for fire fighting.

The original house on the lot, on what will be parcel 1, was constructed in 1952 in its current location. The 2nd residential structure, on what will be parcel 2, has been in its

current location on the site since it was moved there in 2007. A technical change of the property line along NE 42nd Avenue from a street side to a front property line has no substantive impact on the relationship of the existing buildings to the adjacent right-of-way of NE 42nd Avenue or to neighboring properties. Since the front building setback is from the existing building to a street and no exterior alterations are proposed, light and air are maintained, as is separation for fire protection and access for fire fighting.

They reflect the general building scale and placement of houses in the city's neighborhoods. As stated above, this is a technical change and the structures are maintaining their existing relationships to the neighboring properties and the right-of-way, with setbacks approved under the zoning code in place in 2007. The house on parcel 1 is a one-story house on a corner lot that is oriented towards NE Ainsworth Street and has a 18.7 foot setback from it. The house on parcel 2 is an older, two-story house that was moved to the site from another location. It has been oriented towards NE 42nd Avenue since placement in 2007. While there are newer, taller three-story structures a block south of the subject property on property zoned R2, the predominant building scale in the established, mature neighborhoods to the north, west, and east is one-story houses and two-story houses with a 2nd story that has a notably smaller floor area than the main floor. This scale matches that of the existing structures on the subject site perfectly.

The applicants are requesting a 25% reduction in the front yard setback from NE 42nd avenue for parcel 1 to allow the existing location to be maintained. As noted above, the house has been oriented to NE 42nd Avenue as a side street setback since it was originally built in 1952. The block pattern west of NE 42nd Avenue in the vicinity is commonly shorter blocks North to South, creating corner lots as a notable feature. Of those corner lots, orientation to NE 42nd is uncommon. In other words, while the front yard will technically change from NE Ainsworth to NE 42nd Avenue, the house will continue to maintain a relationship with the surrounding streets that reflects the predominant pattern in the surrounding neighborhood.

The applicants are requesting a 36% reduction in the front yard setback for the existing structure on parcel 2. As mentioned above, the house was placed on the site back in 2007 to serve as the 2nd unit of a duplex on the lot. It was placed oriented to NE 42nd Avenue, but was only required to meet the side yard setback to that street because the front yard was still officially on NE Ainsworth Street. While the front of the house appears closer to NE 42nd Avenue than is common in the neighborhood, a number of factors come into play that allow the building's placement to maintain a relationship with the street that reflects the overall sense of placement in the neighborhood of structures to the street. One, the house has been at its current location for over 12 years and have itself contributed to general building placement in relationship to the street over that time. Additionally, the right-of-way is exceptionally deep at this location, with a 12-foot deep landscape strip between the property line and the sidewalk, so that while the house is only 6.4 feet away from the property line, it is 18.4 feet away from the sidewalk, which gives the appearance of a front setback well in-excess of the required 10 feet. Finally, this lot is in a transitional location between the established residential neighborhood to the north and the park and newly redeveloping multi-dwelling development to the south. This new development has a much larger mass that contributes to a perception of reduced setbacks to the street. As such, the reduced front yard setback for the house on parcel 2 provides continuity between the building placement to the south and the building placement to the north.

They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;

As noted above, the requested adjustment is technical in nature and doesn't change the existing relationship of the structures to the street. The house on parcel one will continue to relate to NE Ainsworth Street as its front yard, even if the zoning code defines it as a street-facing side yard. That yard on NE Ainsworth is 18.7 feet deep to the property line and 20.7 feet deep to the sidewalk, which provides an open and visually pleasing yard consistent with the other yards on the street that face NE Ainsworth Street.

As also noted above, the house on parcel 2, while technically only 6.4 feet from the front property line, is 18.4 feet from the sidewalk. The result is a front yard that is open and able to be maintained in a visually pleasing manner, consistent with the other front yards in the neighborhood.

They provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity.

The existing structures will maintain compliance with all other base zone standards for the R5 zoning at the property, including outdoor area. If at a future date the existing houses are demolished, new development will need to meet the setback standards in place at that time or request an Adjustment to those standards. To ensure that this is the case, the conclusions at the end of these findings will make clear that the adjustment applies only to the existing structures.

Based on the above findings, staff finds that the 7.5 front building setback for parcel 1 and the 6.4 front building setback for parcel 2 equally meet the purpose of the setback standard.

Criterion met.

B. If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

Finding: The subject property is located in the R5 zone, a single-dwelling residential zone. Therefore, this criterion requires that the proposal will not significantly detract from the livability or appearance of the residential area. The existing use of both structures for which the applicant is requesting the front setback adjustment is residential/household living. Both structures were allowed under the zoning code as a duplex on a corner lot in the R5 as 33.110.240 Alternative Development Options was written in 2007, when the house on proposed parcel 2 was placed. Both houses are allowed under the current zoning code per the same code section, the only difference being certain new standards requiring aesthetic compatibility that were not in place in 2007. As part of mitigation for this adjustment request, the applicants have proposed meeting those standards of aesthetic compatibility as practical when constructing the new shed addition between the units. These mitigation efforts, discussed in more detail below, in combination with the findings for approval criteria A, above, demonstrate that the proposal is consistent with and will not detract from the appearance of the residential area, as expressed through the base zone standards of the R5 zone. As the use is consistent with the residential character of the area, it contributes to and does not detract from the livability of the residential area. Based on these findings, staff concludes that a reduced 7.5 front building setback for parcel 1 and a reduced 6.4 front building setback for parcel 2 equally meet this criterion.

Criterion met.

C. If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

Findings: Only one adjustment is being requested.

Criterion not applicable.

D. City-designated scenic resources and historic resources are preserved;

Finding: City-designated scenic resources are identified on the Official Zoning Maps with a lower case “s,” while historic resources are identified either with a dot or as being within the

boundaries of a Historic or Conservation district. The subject property is not within a City-designated 's' overlay zone and is not within a Historic or Conservation district. The property is over one-half mile from the nearest environmental overlay. Considering the lack of proximity to any historic or scenic resources, identified city-designated resources will not be impacted.

Criterion met.

E. Any impacts resulting from the adjustment are mitigated to the extent practical; and

Finding: As noted above in the findings for criterion B, these structures with the proposed attachment comply with all development standards for attached houses on corner lots in the R5 but for two: The front building setbacks that are the subject of this Adjustment and the aesthetic compatibility standards of 33.110.240. These standards require that both units on a corner lot must share the same exterior finish materials, trim size and location, window proportion and orientation, roof height and pitch, and eave projection. These standards were not in place at the time the houses became vested as duplex development in 2007. As such, the two structures share little similarity in those traits addressed by the standards. To mitigate for this, the applicants have proposed to construct the shed addition that will connect the two houses with exterior finish materials, trim, and roof elements that tie-in the two structures in a manner that better synthesizes the two styles. For example, the roof line of the south portion of the shed addition is a continuation of the roof line of the house on parcel 1. It then shifts orientation 90 degrees to take on the East/West orientation of the dominant roof surfaces of the house on parcel two. They are proposing to utilize lap siding with a reveal that matches that of the structures that the shed addition will be attached to. Finally, any openings on the shed addition are proposed with trim to match the house on parcel 2. To further mitigate, the applicants are proposing to build the shed addition with a front building setback of 10.7 feet, limiting the Adjustment request to only the existing structures. Staff finds that the minimal impacts resulting from this adjustment request and as identified in the findings for criterion A are being fully mitigated for by taking the measures listed herein.

Criterion met.

F. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

Finding: The property is more than two miles from the nearest environmental zone. This criterion is not applicable.

Criterion not applicable.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all requirements of Title 11 can be met, and that all development standards of Title 33 can be met or have received an Adjustment or Modification via a land use review, prior to the approval of a building or zoning permit.

As previously stated, the existing development on the site will remain on both parcels. Staff has reviewed the proposal and found that there are two standards that will be affected by the land division: building coverage and required outdoor area. In both cases, both parcels will continue to meet standards. Parcel one is allowed a maximum building coverage of 1,811.25 square feet; the existing house has a coverage of approximately 1,350 square feet; no additional structures are proposed on parcel 1. Parcel two is allowed a maximum building coverage of 1,517.62 square feet; approximately 1,315 square feet is proposed (*1,138sf existing building,*

177sf new shed addition). Required outdoor area (min 12'x12' square and min area of 250sf) is provided in the rear and side yards of both parcels.

During staff's site visit, a covered porch was identified on the north side of the house on parcel 1 that is not shown on the site plan (Exhibit C.1). The porch does appear on the tree plan (Exhibit C.2) and while the tree plan doesn't show the house on parcel 2 or the proposed property line in its current configuration, it does appear that the porch will not meet the side setbacks standard from the new lot line. The applicant is required to submit a supplemental survey with the final plat showing all structures at the site, including the covered porch. If the supplemental survey reveals that the covered porch does not meet setback standards, it will need to be demolished or altered to come into conformance with setback standards prior to final plat approval.

The division of the property may not cause the structures to move out of conformance or further out of conformance to any development standard applicable in the R5 zone. Per 33.700.015, if a proposed land division will cause conforming development to move out of conformance with any regulation of the zoning code, and if the regulation may be adjusted, the land division request must include a request for an adjustment. As noted above, with the exception of the covered patio on parcel 1, all development standards will be met with this land division except for the required front building setback, which is being addressed through the concurrent Adjustment request in this review.

As a condition of approval for this review, a building permit must be obtained to construct the shed addition that will connect the two existing structures. The plans must be in substantial conformance with Exhibit C.3 to ensure that the mitigation measures listed under criterion E for the Adjustment Review are achieved. The building permit for the shed addition must be finalized prior to final plat approval.

Additionally, as noted above, a condition of approval will require a supplemental survey showing all structures on the site. Prior to final plat approval, the applicant must ensure that the covered porch on the north side of the house on parcel 1 is in compliance with setback standards or is demolished.

OTHER TECHNICAL REQUIREMENTS

Technical decisions have been made as part of this review process. These decisions have been made based on other City Titles, adopted technical manuals, and the technical expertise of appropriate service agencies. These related technical decisions are not considered land use actions. If future technical decisions result in changes that bring the project out of conformance with this land use decision, a new land use review may be required. The following is a summary of technical service standards applicable to this preliminary partition proposal.

Bureau	Code Authority and Topic
Development Services/503-823-7300 www.portlandonline.com/bds	Title 24 – Building Code, Flood plain Title 10 – Erosion Control, Site Development Administrative Rules for Private Rights-of-Way
Environmental Services/503-823-7740 www.portlandonline.com/bes	Title 17 – Sewer Improvements 2008 Stormwater Management Manual
Fire Bureau/503-823-3700 www.portlandonline.com/fire	Title 31 Policy B-1 – Emergency Access
Transportation/503-823-5185 www.portlandonline.com/transportation	Title 17 – Public Right-of-Way Improvements Transportation System Plan
Urban Forestry (Parks)/503-823-4489 www.portlandonline.com/parks	Title 11 – Trees
Water Bureau/503-823-7404 www.portlandonline.com/water	Title 21 – Water availability

As authorized in Section 33.800.070 of the Zoning Code conditions of approval related to these technical standards have been included in the Administrative Decision on this proposal.

1. Fire/Life Safety. The applicant must apply for a building permit for the proposed shed addition attaching the two structures. It must be designed to meet all applicable building codes and ordinances.
2. Fire/Life Safety. Attached dwellings that are separated by a property line at a common wall must be constructed as townhouses per Oregon Residential Specialty Code, R302.2. A Covenant for Future Easement and Maintenance Agreement meeting the requirements of the Code and approved by BDS must be recorded prior to issuance of the Building Permit.
3. Fire Bureau. One- and two-family dwellings. The minimum fire-flow requirements for one- and two-family dwellings having a fire flow calculation area, which does not exceed 3,600 square feet, shall be 1,000 gallons per minute. Fire flow and flow duration for dwellings having a fire flow calculation area in excess of 3,600 square feet shall not be less than that specified in Table B105.1.
4. Urban Forestry. Street Tree Planting prior to final plat approval:
 - a. Two new street trees along NE Ainsworth St and two new street trees along NE 42nd Ave must be shown on the final plat plans, along with the existing street tree to be retained. The new street trees must be planted prior to final plat approval. Trees must meet city planting standards (<https://www.portlandoregon.gov/trees/article/496924>) and be chosen from the proper list:
 - i. For Ainsworth St: 3.0-3.9' sites with or without overhead high voltage power lines (<https://www.portlandoregon.gov/trees/article/516349>)
 - ii. For NE 42nd Ave: 4.0-5.9' sites with overhead high voltage power lines (<https://www.portlandoregon.gov/trees/article/516350>)
5. Urban Forestry. Fee in Lieu of planting for 1.5 tree diameter inches is required for lost street tree planting spaces. Payment required prior to final Plat approval.

CONCLUSIONS

The applicant has proposed a 2-parcel partition with a front building setback adjustment request for both existing structures, as shown on the attached preliminary plan (Exhibit C.1). As discussed in this report, the relevant standards and approval criteria have been met, or can be met with conditions. The primary issues identified with this proposal are: reduced setbacks, building code conformance, and maintaining the residential character of the neighborhood.

With conditions of approval that address these requirements this proposal can be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to reduce the front building setback for the existing house on parcel 1 from 10 feet to 7.5 feet.

Approval of an Adjustment to reduce the front building setback for the existing house on parcel 2 from 10 feet to 6.4 feet.

Approval of a Preliminary Plan for a 2-parcel partition for attached housing on a corner lot in the R5 zone, as allowed by 33.110.240.E, as illustrated with Exhibit C.1, subject to the following conditions:

A. Supplemental Plan. Three copies of an additional supplemental plan shall be submitted with the final plat survey for Land Use Review, BES, and Life Safety review and approval. That plan must portray how the conditions of approval listed below are met. In addition, the supplemental plan must show the surveyed location of the following:

- Any buildings or accessory structures (including the covered patio and the new shed addition) on the site at the time of the final plat application;

- Any driveways and off-street vehicle parking areas on the site at the time of the final plat application;
- Any other information specifically noted in the conditions listed below.

B. The following must occur prior to Final Plat approval:

Utilities

1. The applicant shall meet the requirements of the Fire Bureau for ensuring adequate hydrant flow from the nearest hydrant. The applicant must provide verification to the Fire Bureau that Appendix B of the Fire Code is met, the exception is used, or provide an approved Fire Code Appeal prior final plat approval.

Existing Development

2. The applicant must obtain a finalized building permit for the proposed shed addition attaching the two structures. The shed addition must be constructed in accordance with the following:
 - i. It must be designed to meet all applicable building codes and ordinances.
 - ii. In order to mitigate for the Adjustment Request, where practical, the shed addition must incorporate the design elements listed in 33.110.240.E.4.c and in substantial conformance with Exhibit C.3, Elevation Drawings in Shed Addition Plan Set.
3. The applicant must meet Site Development requirements for decommissioning the on-site sewage disposal system for the existing house.
4. The applicant must document the location of the stormwater disposal system serving the existing dwelling on Parcel 1 to confirm whether it will be located entirely within Parcel 1 and meet all required setbacks. If the system will extend beyond the boundaries of Parcel 1 or no longer meet setback requirements per the SWMM, then the applicant must meet one of the following:
 - i. Obtain approval of a plumbing code appeal from BDS and provide private stormwater easements on the final plat, or other legally acceptable instrument as approved through the appeal review, as necessary; or
 - ii. Modify the stormwater system so that it results in a system which meets the City's Stormwater Management Manual and other BES requirements. Obtain finalized permits as necessary prior to final plat approval.
5. The applicant must alter or demolish as necessary the covered porch on the north side of the house on parcel 1 to ensure that it is in compliance with the setback standards from the new lot line.

Required Legal Documents

6. The applicant shall execute an Acknowledgement of Tree Preservation Land Use Conditions that affirms that the flowering dogwood in the south side yard of parcel 1 must be protected during any future development or staging within its root protection zone. Protection must meet the tree protection specifications of 11.60.030. The acknowledgment shall be referenced on and recorded with the final plat.
7. To meet Fire/Life Safety requirements, A Covenant for Future Easement and Maintenance Agreement approved by BDS and meeting the requirements of Oregon Residential Specialty Code, R302.2 (*for attached dwellings that are separated by a property line at a common wall*) must be recorded prior to issuance of the Building Permit for the shed addition.

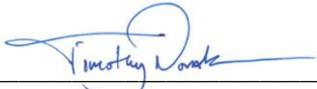
Other requirements

8. Applicant must meet Urban Forestry requirements to plant two new street trees along NE Ainsworth St and two new street trees along NE 42nd Ave. Trees must meet city planting standards (<https://www.portlandoregon.gov/trees/article/496924>) and be chosen from the proper list:
 - i. For Ainsworth St: 3.0-3.9' sites with or without overhead high voltage power lines (<https://www.portlandoregon.gov/trees/article/516349>)
 - ii. For NE 42nd Ave: 4.0-5.9' sites with overhead high voltage power lines (<https://www.portlandoregon.gov/trees/article/516350>)
9. The applicant must pay into the City Tree Preservation and Planting Fund *[Street Trees – Fee in Lieu of Planting and Establishment (per inch)]* the amount equivalent to 1.5 inches of trees. Payment must be made to the Bureau of Development Services, who administers the fund for the Parks Bureau.

C. The following conditions are applicable to site preparation and the development of individual lots:

1. Parcels 1 and 2 may only be developed with attached houses meeting the development standards of Section 33.110.240.E.
2. The flowering dogwood tree identified on Exhibit C.2, must be preserved and protected in accordance with 11.60.030 Tree Protection Specifications during any future development on parcel 1.

Staff Planner: Timothy Novak

Decision rendered by:  **on July 15, 2019**
 By authority of the Director of the Bureau of Development Services

Decision mailed: July 17, 2019

About this Decision. This land use decision is **not a permit** for development. A Final Plat must be completed and recorded before the proposed lots can be sold or developed. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on September 10, 2018, and was determined to be complete on February 19, 2019. On April 17, 2019, the applicant extended the 120-day review period for an additional 90 days.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on September 10, 2018.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant requested that the 120-day review period be extended for an additional 90 days. Unless further extended by the applicant, **the 120 days will expire on: 9/17/2019.**

Note: some of the information contained in this report was provided by the applicant. As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term “applicant” includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appealing this decision. This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on July 31, 2019** at 1900 SW Fourth Ave. Appeals can be filed at the 5th floor reception desk of 1900 SW 4th Avenue Monday through Friday between 8:00 am and 4:30 pm. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please contact the receptionist at 503-823-7617 to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.ci.portland.or.us .

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283 or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Hearings Officer an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

Recording the land division. The final land division plat **must** be submitted to the City **within three years** of the date of the City’s final approval of the preliminary plan. This final plat must be recorded with the County Recorder and Assessors Office after it is signed by the Planning Director or delegate, the City Engineer, and the City Land Use Hearings Officer, and approved by the County Surveyor. **The approved preliminary plan will expire unless a final plat is submitted within three years of the date of the City’s approval of the preliminary plan.**

Recording concurrent approvals.

If the preliminary land division approval also contains approval of other land use decisions (examples include adjustments, conditional uses, and environmental reviews), these other approvals will be recorded with the Multnomah County Recorder.

- *Unless appealed*, the final decision will be recorded after **August 1, 2019** by the Bureau of Development Services.

The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder.

For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of concurrent approvals. The preliminary land division approval also includes concurrent approval of Adjustment Review. For purposes of determining the expiration date, there are two kinds of concurrent approvals: 1) concurrent approvals that were necessary in order for the land division to be approved; and 2) other approvals that were voluntarily included with the land division application.

The following approvals were necessary for the land division to be approved: Adjustment Review
This approval expires if:

- The final plat is not approved and recorded within the time specified above, or
- Three years after the final plat is recorded, none of the approved development or other improvements (buildings, streets, utilities, grading, and mitigation enhancements) have been made to the site.

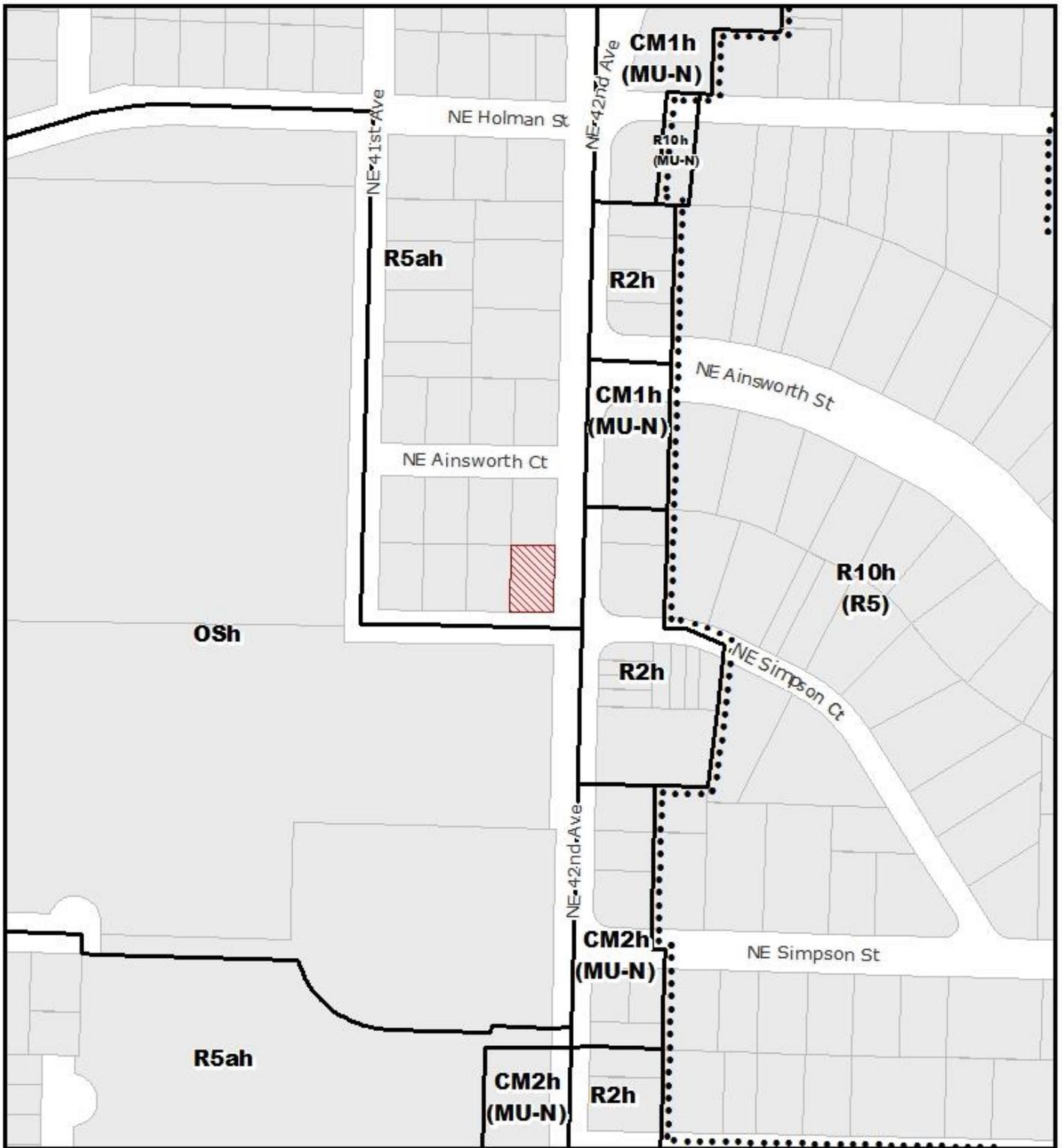
All other concurrent approvals expire three years from the date rendered, unless a building permit has been issued, or the approved activity has begun. Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Materials
 1. Applicant's LDP Narrative
 2. Applicant's Adjustment Review Narrative
 3. Arborist Report
 4. Neighborhood Contact Requirement Documents
 5. Request for Extension of 120-Day Review Period
 6. Original Site Plan
 7. Revised Site Plan
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site Plan, Final (attached)
 2. Tree Inventory Plan
 3. Elevation Drawings with exterior finish materials called-out.
 4. Elevation Drawing with street-facing windows dimensioned.
 5. Sewer/Stormwater Systems Plan
- D. Notification information:
 1. Mailing list – March 5, 2019
 2. Mailed Notice – March 5, 2019
 3. Mailing list – May 28, 2019
 4. Mailed Notice – May 28, 2019
- E. Agency Responses:
 1. Bureau of Environmental Services
 2. Bureau of Transportation Engineering and Development Review
 3. Water Bureau
 4. Fire Bureau
 5. Site Development Review Section of BDS
 6. Bureau of Parks, Forestry Division
 7. Fire/Life Safety Division of BDS
- F. Correspondence
 1. E-mail from staff to applicant regarding required Adjustment Review
 2. Incompleteness Letter from staff to applicant
- G. Other:
 1. Original LU Application
 2. Revised LU Application

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).



ZONING 
NORTH

 Site

File No.	LU 18-235195 LDP AD
1/4 Section	2434
Scale	1 inch = 200 feet
State ID	1N1E13DA 3200
Exhibit	B May 15, 2019

